



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**

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**MEMORANDUM**

DATE: October 30, 2009

TO: Ms. Sharon L. Summers, DSS  
Policy, Program & Development Unit

FROM: Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: 13 DE Reg. 450 [DSS TANF Transitional Work Program Participation Regulations]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSSs) proposal to adopt significant amendments to its TANF regulations published as 13 DE Reg. 450 in the October 1, 2009 issue of the Register of Regulations. In a nutshell, the proposal authorizes DSS to require persons with disabilities determined unemployable to participate in a new transitional work program ("TWP"). Failure to meet the expectations and timetable of a TWP employability plan will result in TANF sanctions. SCPD has the following observations.

First, there is no regulatory definition of the "transitional work program". It is described in the summary as follows:

The Transitional Work Program (TWP) is a new mandatory program for TANF parents and caretakers who as a result of physical or mental disabilities have been determined to be unable to work in an unsubsidized employment setting. The program will assist clients through assessment, case planning, and case management leading to employment when appropriate or to application for federally funded disability programs.

At 451. At a minimum, DSS should consider adding a definition of "transitional work program" to its compilation of definitions at Section 3001.

Second, there is no description of the beneficiary's ability to influence the timelines and content of the TWP. The DSS regulations (§3010) covering the Contract of Mutual Responsibility ("CMR") at



least authorize some beneficiary input:

The caretaker may object to certain aspects of the Contract. The caretaker needs to present any objections up front, at the time of the initial Contract or upon Contract revision. DSS retains the ultimate decision making authority as to what elements are put into the Contract of Mutual Responsibility.

DSS expects clients to cooperate in the development of the Contract of Mutual Responsibility. Certain aspects of the Contract, such as, but not limited to, participation in employment-related activities, meeting school attendance requirements and immunization, cannot be amended. However, even though certain aspects cannot be amended, this does not imply that caretakers cannot discuss and/or negotiate Contract requirements. Further, this is not to imply that such discussion and/or negotiation is non-cooperation. To the extent possible, each caretaker should be able to mutually develop her/his Contract. DSS is to give caretakers the opportunity to understand the Contract and its requirements, as well as to discuss the Contract with persons outside the DSS office. Reasons for requesting such an outside review of the Contract include, but are not limited to, language barriers, developmental disabilities, or to seek legal or other counsel. Caretakers therefore, should be granted their requests to remove proposed Contracts from the DSS office in order to review it with another person. This should not be considered non-cooperation.

#### Section 3010.

There is no corresponding authorization for input into the TWP by the beneficiary. At a minimum, such authorization should be added to the regulations.

Third, there is a “disconnect” between the new regulation and the definition of “unemployable” in §3001N. The definition of “unemployable” is as follows:

N. Unemployable - the inability to engage in activities necessary to work for at least the minimum wage; the person is prohibited because s/he is physically or mentally disabled. An unemployable individual cannot participate in employment or activities necessary to seek and obtain employment, e.g., job search, job training, job readiness, etc.

[emphasis supplied]

Thus, by definition, an “unemployable” beneficiary is someone who cannot benefit from job training, job readiness activities, etc. In contrast, the regulation [3017.1] anomalously requires the “unemployable” beneficiary to enroll in a transitional work program which includes activities medically certified (3001N) as beyond the capabilities of the beneficiary. If a doctor has certified that a beneficiary is incapable of even job readiness activities, why authorize DSS workers to require enrollment in such activities? The predictable result will be application of sanctions to persons with disabilities who will be penalized despite lack of fault.



Fourth, the proposed regulations provide conflicting information on whether enrollment in the TWP is mandatory or discretionary. On the one hand, the “Summary of Proposed Change” describes the TWP as “a new mandatory program for TANF parents and caretakers who as a result of physical or mental disabilities have been determined to be unable to work ...”. In contrast, the actual regulation (§3017.1) provides the DSS worker with discretion to require participation since it recites that persons “may be required to enroll and participate in the Transitional Work Program”. There are no standards to guide DSS workers in determining which beneficiaries with disabilities will be required to enroll and participate in the TWP under §3017.1. Since there will be circumstances under which participation would clearly be of negligible value (e.g. caretaker with terminal illness awaiting results of SSI application), it makes sense to offer workers discretion.

Fifth, there is a “disconnect” between the definition of “sanction” and §3017.1.1. The definition of “sanction” recites as follows:

If a TANF client refuses or fails to attend a Contract of Mutual Responsibility requirement (e.g. participate in parenting education) the penalty is a \$50 reduction in the grant for each month the client refuses or fails to participate.

Section 3001K.

In contrast, the sanction for non-compliance with the Contract of Mutual Responsibility (“CMR”) under proposed §3017.1.1 is not limited to a \$50 monthly reduction of the grant. Rather, the penalty increases exponentially each month:

The sanction for failure, without good cause, to meet the time limits established in the CMR and the TWP Employability Plan will be an initial \$50.00 reduction in TANF benefits. This reduction will increase each month by \$50.00, either until all activities which exceed the time limits established in the CMR and TWP employability plan are completed or the case is closed.

Section 3017.1.1. DSS may wish to ensure consistency among the regulations.

Sixth, if beneficiaries with disabilities are being involuntarily required to participate in the transitional work program, it would be preferable to explicitly recite that reasonable accommodations will be provided to facilitate effective participation. Compare §3006.1.

Finally, SCPD prefers a voluntary participation approach to “unemployable” persons with disabilities enrolling in pre-vocational activities. Compare §3006.1. In addition, the Council objects to the concept of subjecting medically certified unemployable beneficiaries with disabilities to strict compliance with TWP employability plans developed by unknown entities with no regulatory guidance on content, consumer input, or feasibility.



Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulations.

cc: Ms. Elaine Archangelo  
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Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

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